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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,788

02/16/2007

Reiner Fischer

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2694

26111

7590

06/18/2009

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
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EXAMINER

CHU, YONG LIANG

ART UNIT

PAPER NUMBER

1626

MAIL DATE

DELIVERY MODE

06/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,788	Applicant(s) FISCHER ET AL.	
	Examiner YONG CHU	Art Unit 1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 6-13 and 15-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 14 is/are rejected.
- 7) ☒ Claim(s) 1-5 and 14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-24 are pending in the instant application. Claims 6-13 and 15-24 remain withdrawn as non-elected subject matter. Claims 1-5 and 14 are under examination on the merits.

Response to Amendment

The Amendment by Applicants' representative Cynthia M. Bouchez dated on 04/08/2009 has been entered.

Declaration under Rule 37 C.F.R. §1.132

Applicants' submission of the Declaration under Rule 37 C.F.R. §1.132, filed on 04/08/2009 has been entered.

Response to Arguments/Remarks

Objection to the claims

Applicants' amendment has replaced most commas with semicolons. However, the one under substituent **X** has not been changed. Appropriate correction is required. In addition, a term "or" also should be inserted between "nitro," and "cyano" under the substituent **X**, line 2. Therefore, the objection is maintained.

The provisionally objection to the claims for containing non-elected subject matter is maintained due to the same reason.

Rejection under 35 U.S.C. §103(a)

The declaration under 37 CFR 1.132 filed 04/08/2009 is insufficient to overcome the rejection of claims 1-5 and 14 under 35 U.S.C. § 103(a) as set forth in the last Office

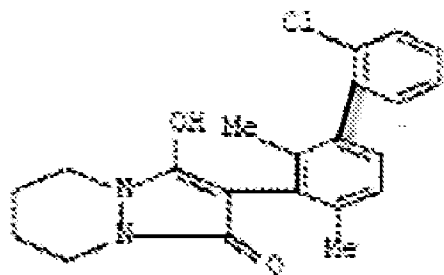
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action because: 1) Some of the terms used in the Declaration are not well-defined, such as “g/ha” and “% 7d”. It is not clear what the concentration of the active compounds is applied in the experiments per area. 2) Testing results of the previously cited '973 compound (CAS TN 329706-33-4) is not disclosed in the Declaration as the most related compound for unexpected results. A side-by-side comparison of testing

results should at least include the compounds



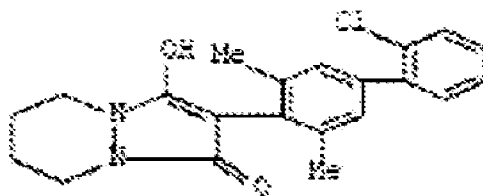
and



. 3) The experimental design should include the plants disclosed in WO01/17973 publication, Table B2 at page 68 as an objective obvious reach of a claim.

Applicants' argument of the 103(a) rejection on the ground that Maetzke (i.e. the '973 publication) does not disclose the claimed compounds of the present invention and does not provide a reason for modifying its compounds, and neither the compounds of this general formula nor the compounds described in the examples of Maetzke has been fully considered, and is found not persuasive. As cited in the previous Office

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action, a specific compound

was disclosed by

Maetzke as an herbicide for the same purpose as the instant application. The ring placement variation on the phenyl ring (i.e. meta- vs. para-) is an obvious modification to one skilled in the art because structurally similar analogs assume to have the same utility as an herbicide. This analysis is also supported by the Court opinion, *in re* Jones, 162 F.2d 638. See page 5 of the Office action. Therefore, the rejection is maintained.

Conclusions

- No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Chu, Ph.D., whose telephone number is 571-272-5759. The examiner can normally be reached on 7:00 am - 3:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Yong Chu/
Patent Examiner
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